

Filed 4/25/19 In re Marco R. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re MARCO R. et al., Persons
Coming Under the Juvenile Court
Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

VANESSA N.,

Defendant and Appellant.

B290814 c/w B293141

(Los Angeles County
Super. Ct. No. 18CCJP00158A-D)

APPEAL from orders of the Superior Court of Los Angeles
County. D. Brett Bianco, Judge. Dismissed as moot.

Jesse McGowan, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Sarah Vesecky, Deputy County
Counsel, for Plaintiff and Respondent.

This appeal primarily concerns mother's younger children: Isaac, age 9, and Laura, age 6. The family, consisting of four children, came to the attention of the Department of Children and Family Services (the Department) after stepfather strangled mother's oldest son in front of the younger children. The oldest son survived, and stepfather was arrested and convicted of child abuse. While the Department investigated the abuse, Isaac and Laura went to visit their father in Colorado, where a custody case involving them was already pending. The California juvenile court exercised emergency jurisdiction over all the children, and reached out to the Colorado court about the proceedings. Isaac and Laura were detained but released to mother, who then fled with them to New Mexico. The juvenile court issued protective custody warrants, and the children were brought back to California. The Colorado court relinquished jurisdiction, and the juvenile court declared Isaac and Laura dependents. The juvenile court subsequently terminated jurisdiction over them, giving father primary physical custody under a juvenile court exit order.

Mother appeals from the jurisdictional and dispositional orders of the court as well as the court's custody orders regarding Isaac and Laura. Mother does not challenge the juvenile court's findings that these children were endangered by stepfather's physical abuse of their sibling and mother's failure to protect them. Rather, mother argues only that the juvenile court erred in exercising emergency jurisdiction over Isaac and Laura while they were out of state. We do not reach this argument because we conclude the appeal is moot as the court later exercised permanent jurisdiction over the children and then terminated jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

As the principal issues in this appeal only directly concern mother's two youngest children, our summary of the proceedings focuses on them.

In October 2017, stepfather choked mother's oldest son for approximately 20 seconds in the presence of Isaac and Laura. Stepfather was convicted of child cruelty (Pen. Code, § 273a, subd. (b)) and ordered to stay away from the oldest child. The Department initiated an investigation and discovered that mother, father, Isaac, and Laura were already involved in a family law case in Colorado. In December 2017, while the Department investigation was ongoing, Isaac and Laura went to visit their father in Colorado.

The Department filed a petition in January 2018 alleging that stepfather's physical abuse of the oldest child and mother's failure to protect endangered the children. At the detention hearing on January 10, 2018, none of the family members were present; Isaac and Laura were still in Colorado. The juvenile court exercised emergency jurisdiction over the children (Fam. Code, § 3424), and found a prima facie case for detaining them.

Father obtained a modified custody order from the Colorado court, giving him temporary sole legal and physical custody. However, on January 25, 2018, the Colorado court released Isaac and Laura to mother. On January 31, 2018, the juvenile court in California likewise released the children to mother "to the extent that that order is not in conflict with the Colorado order," and ordered mother to make the children available to the Department for interviews.

In March 2018, the Department asked the juvenile court to issue protective custody warrants as to Isaac and Laura because

mother had taken them to New Mexico and had not allowed the Department to interview them. The court issued the warrants, and the Department brought the children back to California.

In April 2018, the juvenile court and Colorado court conducted a joint hearing telephonically. The Colorado court found that Colorado had “become an inconvenient forum” and relinquished jurisdiction “on the assumption that California [would] assume jurisdiction.” The Colorado court explained that the evidence of abuse was in California, and “the majority of what’s going on with this family’s [*sic*] located in the State of California.” The court concluded that “everything I’ve heard focuses on California,” and “[i]t would be too hard to litigate any of [the abuse] issues in Colorado.”

The juvenile court accepted jurisdiction, and subsequently sustained the petition as pled. The court removed Isaac and Laura from mother, and released them to father. Mother was allowed monitored visits. She timely appealed (B290814).¹

Father then filed a Welfare and Institutions Code section 388 petition requesting that the juvenile court terminate jurisdiction over Isaac and Laura because they were safely residing with him. The juvenile court granted the petition and terminated jurisdiction over these children with a juvenile court exit order. (Welf. & Inst. Code, § 362.4.) Mother again timely appealed (B293141).²

¹ Mother appealed as to all four children. However, as she makes no arguments as to the older two children, we treat the appeal as it relates to those children as abandoned.

² We have consolidated the two appeals for argument and decision.

DISCUSSION

Mother's sole contention on appeal is that the juvenile court erred in issuing protective custody warrants for Isaac and Laura because the court did not have jurisdiction over them. She argues the juvenile court could not exercise emergency jurisdiction over the children while they were out of state. Mother further contends she was prejudiced by the issuance of the warrants because the Colorado court, which initially had exclusive continuing jurisdiction because it had issued prior custody orders, would not have relinquished jurisdiction had the children not been located in California. We conclude mother's challenge to the juvenile court's issuance of the protective custody warrants is moot because the juvenile court later properly exercised permanent jurisdiction over the children and then terminated jurisdiction with a juvenile court exit order.³

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (Fam. Code, § 3400 et seq.) "governs dependency proceedings and is the exclusive method for determining the proper forum to decide custody issues involving a child who is subject to a sister-state custody order."⁴ (*In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1096.) The UCCJEA provides for jurisdiction to make an initial custody determination if, among other grounds, this state is the home state of the child at the time the proceedings begin, and defines "home state" as the state in which a child lived with a parent for a least six consecutive

³ Because we conclude this appeal is moot, we need not address mother's argument that a juvenile court may not exercise emergency jurisdiction over a child who is not physically present in the state.

⁴ All further statutory references are to the Family Code.

months prior to custody proceedings. (§§ 3421, subd. (a)(1) & 3402, subd. (g).)

However, “the UCCJEA takes a strict ‘ “first in time” approach to jurisdiction.’ [Citation.] With certain exceptions . . . ‘once the court of an appropriate state [citation] has made a “child custody determination,” that court obtains “exclusive, continuing jurisdiction” [Citation.]’ [Citations.] As such, the court of another state, including California, ‘[c]annot modify the child custody determination [citations]’ and ‘[m]ust enforce the child custody determination [citations.]’ [Citation.]” (*In re Marriage of Fernandez-Abin & Sanchez* (2011) 191 Cal.App.4th 1015, 1040 (*Sanchez*); see also § 3423.)

This rule does not prevent another state from exercising temporary emergency jurisdiction. “[E]ven when UCCJEA jurisdiction rests with another state or country, . . . a California court may exercise temporary jurisdiction if the child is present in this state and, as relevant here, the exercise of such jurisdiction is ‘necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to, or threatened with, mistreatment or abuse.’ (§ 3424, subd. (a).)” (*Sanchez, supra*, 191 Cal.App.4th at pp. 1040-1041.)

“A court of this state can properly exercise emergency jurisdiction under section 3424, but it is required to contact, and provide notice to, a court of the other state to determine whether the other state wishes to assert jurisdiction under section 3421 and commence proceedings to protect the child. [Citation.] In addition, when a court of this state acting under temporary emergency jurisdiction is informed there is or has been a child custody proceeding in a court of a state having jurisdiction under section 3421, this court must immediately communicate with the

other court. (§ 3424, subd. (d).)” (*In re R.L.* (2016) 4 Cal.App.5th 125, 142-143.)

“When reviewing a jurisdictional order under the UCCJEA, a court of review is not bound by the trial court’s findings and may independently reweigh the jurisdictional facts. [Citations.]” (*Sanchez, supra*, 191 Cal.App.4th at p. 1042.) “Failure to comply with the procedural requirements of the UCCJEA is subject to harmless error analysis.” (*In re Cristian I., supra*, 224 Cal.App.4th at p. 1098.) “Reversal is justified ‘only when the court, “after an examination of the entire cause, including the evidence,” is of the “opinion” that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.’ [Citations.]” (*Id.* at pp. 1098-1099.)

Here, there is no dispute that at the time of the stepfather’s abuse that led to these proceedings, a Colorado state court had continuing jurisdiction over Isaac and Laura extending back at least to July 1, 2015, the date of the most recent custody order regarding them. Mother argues that the juvenile court did not have temporary emergency jurisdiction under the UCCJEA to issue protective custody warrants for Isaac and Laura because the children were not present in California when the juvenile court found emergency jurisdiction. We need not decide the meaning of “present” under the emergency jurisdiction statute (§ 3424), because we conclude there is no relief we can give mother. Mother’s challenge is moot: The juvenile court exercised permanent jurisdiction over the children with the acquiescence of the Colorado judge and later terminated jurisdiction with a juvenile court exit order. Thus, there is no effective relief that we can grant mother. (See *In re Julien H.* (2016) 3 Cal.App.5th

1084, 1088, fn. 7 [father’s challenge to predetention removal and detention orders was moot because those orders were superseded by the disposition orders and no effectual relief could be provided by the reviewing court].)

There appears to be no dispute that the children resided in California prior to their visit with father in Colorado and then being taken to New Mexico, and that California was their “home state” as defined in the UCCJEA within the six-month period before the commencement of the proceeding. (See §§ 3421, subd. (a)(1) & 3402, subd. (g).) Nor could New Mexico have qualified as the children’s home state under section 3421, subdivisions (a)(1) or (a)(2). Therefore, even if the juvenile court could not properly exercise emergency jurisdiction when the children were out of state, the juvenile court could properly exercise permanent modification jurisdiction, so long as the Colorado court determined California was the more convenient forum. (See §§ 3423, 3421, subd. (a)(2).)⁵ Thus, even assuming there was no temporary emergency jurisdiction in California at the time the proceeding was filed, the remedy would be to order the juvenile court to contact the Colorado court to determine if it were willing to relinquish jurisdiction to allow California to exercise permanent jurisdiction. (See *In re A.M.* (2014) 224 Cal.App.4th 593, 598.) Here, the juvenile court has already contacted the Colorado court which has relinquished jurisdiction, therefore, there is no relief we can grant mother.

⁵ Even if Colorado were the home state, California would still obtain permanent modification jurisdiction given the underlying facts and proceedings. (See §§ 3423, 3421, subd. (a)(2).)

DISPOSITION

The appeal is dismissed as moot.

RUBIN, P. J.

WE CONCUR:

MOOR, J.

KIM, J.